IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.96 Of 2000.

Date of decision: September 3, 2007.

Jamit Rai and others. ……. Appellants.

Vs.

State of Himachal Pradesh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellants: Mr.Virender Rathore, Advocate.

For the respondent: Mr. V.K.Verma, Additional Advocate General.

Surinder Singh, J (oral):

Heard and gone through the record of the case.

The instant appeal has been filed by the appellants feeling aggrieved by and dissatisfied with the judgment of conviction and sentence passed by the learned Sessions Judge in Sessions Case No.32-N/VII/1999 dated 25th February, 2000.

Originally, the appellants alongwith Ranjit Kumar alias Lucky, Jagdish and Ashwani alias Ashi were charge-sheeted and tried under Sections 147, 326 read with Section 149, 324 read with Section 34 and 307 read with Section 149 of the Indian Penal Code, on the allegations that in the evening of 29th July, 1998, they were the members of an unlawful assembly and in furtherance of their common intention, they have caused grievous hurt to Rakesh and Mohinder Singh and simple injuries to Rakesh, Swaran Singh, Sukhpal Singh, Sandeep Singh, Hardeep Singh, Mohinder Singh and Virender

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

Singh and caused injuries with swords to Varinder Singh and Hardeep Singh, at the place known as Mohtali Ramp.

To prove the offences charged, the prosecution had examined 21 witnesses, out of which eight were injured persons. The appellants and other

convicts were also examined under Section 313 of the Code of Criminal Procedure. The circumstances, which were attendant upon each of them, were put to them, to which they denied. They were also called upon to enter in their defence and lead the evidence in defence. The appellants examined three witnesses and two court witnesses were also examined. After hearing the arguments and going through the record, the learned Sessions Judge acquitted the appellants under Section 307 of the Indian Penal Code, but convicted and sentenced each of them for the following offences:

Offence Under Section	Sentence imposed
Under Section 147 of the Indian Penal Code.	Imprisonment for **three** months
Under Section 324 read with Section 34 of the Indian Penal Code.	Rigorous Imprisonment for a period of **six months** and to pay a fine of Rs.1,000/- each and in default of payment of fine, Simple imprisonment for a period of one month.
Under Section 326 read with Section 149 of the Indian Penal Code.	Rigorous Imprisonment for a period of **one year** and to pay a fine of Rs.2,000/- each. In default of payment of fine, Rigorous imprisonment for a further period of two months each.

All the substantive sentences imposed upon on different counts were ordered to run concurrently. Out of the eight accused persons, only six persons i.e. the appellants herein, have assailed the

impugned judgment of conviction and sentence on law and facts of the case.

Shri Virender Rathore, learned counsel for the appellants has argued that all the appellants except Chander Shekhar have already undergone the sentence and deposited the fine amount. He only confined his arguments qua sentence with respect to Chander Shekhar appellant that though he had also deposited the fine, but has not served the full term of substantative sentence, as imposed by the trial Court, because due to his ill health, he was granted interim bail w.e.f. 8.7.98 and after conviction also the sentence was suspended in appeal by this Court. Learned counsel has further submitted that the ends of justice will be met if his sentence is modified to already undergone.

Mr. V.K. Verma, learned Additional Advocate General has submitted that in order to maintain the parity, appellant Chander Shekhar is also required to undergo the sentence imposed by the trial court.

I have considered the rival contentions and the case on merits from the evidence on record.

As far as case on merits is concerned, the witnesses have supported the prosecution version in its entirety and no cogent explanation to the circumstances which were attendant upon were given by the appellants. The defence witnesses who have been examined could not cause any dent in the prosecution case. All the injured witnesses were examined during the trial and their testimony could not be shattered at all. The learned trial court have rightly appreciated the prosecution case after giving due weight to the medical evidence. Therefore, conviction of each of the appellants is legally sustainable. Therefore, I do not find any default therein. As far as sentence part qua the appellants is concerned,

they have already undergone these sentences imposed by the learned trial court, but for appellant Chander Shekhar, who was arrested on 4th August, 1998 and was granted interim bail on 8.7.1999, on the ground of his ill-health and during the trial he remained on bail and thereafter his sentence was suspended by this Court. Thus he served the sentence for a period of about 11 months and 5 days, which was short of about 25 days of the sentence imposed. Since he had served the major part of his sentence, therefore, the interest of justice will be met, if his sentence is substituted to the sentence already undergone. Therefore, in view of this, the sentence qua Chander Shekhar is modified to above extent without disturbing the fine amount. However, the appeal qua other appellants is dismissed. The matter stands accordingly disposed of.

September 3, 2007. **(Surinder Singh)**
(PDS) **Judge**.